S.B.CIVIL WRIT PETITION NO.1068/1994

Managing Director, Ganganagar Sahkari Spinning Mills Limited, Hanumangarh
v.
State of Rajasthan & Ors.

DATE OF ORDER :: 2nd May, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Rajesh Joshi, for the petitioner.
Mr. S.S.Ladrecha, Additional Government Advocate.

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By this petition for writ a challenge is given to the validity, propriety and correctness of the award dated 11.2.1993 passed by the Labour Court, Bikaner. By the award aforesaid the Labour Court while answering the reference made to it by the appropriate government under a notification dated 3.4.1984 held that termination of the workman w.e.f. 5.8.1982 was illegal. Accordingly, a direction was also given to reinstate the workman in service on a post for which he be found physically fit.

In brief, facts of the case are that the respondent workman entered in services of the petitioner employer as Driver on 17.1.1980, however, because of weak eye sight by an order dated 26.7.1981 he was ordered to work as Tube-well Driver. The workman was also not found fit to work as Tube-well Driver, therefore, he was discontinued from service on 5.8.1982. The Labour Court while accepting the

position that the workman was not physically fit to hold the post of Driver but looking to humanitarian considerations directed the petitioner employer to reinstate him on a post for which he be found physically fit.

The contention of counsel for the petitioner is that once it was found that the workman was not physically fit, it was erroneous to declare the retrenchment illegal.

It is true that the Labour Court was also in agreement with the petitioner employer that the workman was not physically fit but held the termination illegal being in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act of 1947"). From reading of the definition of "retrenchment" as given in Section 2(oo) of the Act of 1947, it is apparent that continuous ill-health does not amount retrenchment. However, in the instant matter the reason for terminating the respondent workman is not continued ill-health but decline in fitness. As such, I do not find any error in the award impugned but looking to the fact that the respondent workman worked with the employer for a very small span and he is out of employment since 1982, I consider it appropriate to modify the relief of reinstatement in service granted by the Labour Court by payment of

suitable compensation i.e. in tune of Rs.35,000/-. The compensation in terms above is required to be paid to the workman within a period of three months from today.

The writ petition is disposed of accordingly.

(GOVIND MATHUR),J.

Kkm/ps.